vfgh
Verfassungsgerichtshof
Österreich

1010 Wien, Freyung 8
Österreich

Mag. Christian Neuwirth
Sprecher des
Verfassungsgerichtshofes
Tel ++43 (1) 531 22-1006
Twitter: @VfGH Sprecher
christian.neuwirth@vfgh.gv.at
www.verfassungsgerichtshof.at

Presseinformation

Hypo Reorganization Act Unconstitutional

The Constitutional Court has concluded its proceedings on the so-called Hypo Reorganization Act and rendered the following decision:

The Hypo Reorganization Act (Hypo-Sanierungsgesetz – HaaSanG) is unconstitutional. It is repealed in its entirety. A deadline for correction has not been set. The Act is no longer applicable.

Essentially, there are two points that render the Act unconstitutional.

o In the Hypo case, there are different groups of creditors, for which the legislator can, in principle, foresee different regimes. There are “normal” creditors (now creditors of HETA) and “junior creditors”, whose position in the event of insolvency is junior, i.e. subordinate, to that of normal creditors.

  However, the Hypo Reorganization Act further differentiates within the group of junior creditors merely on the basis of the cut-off date (set at 30 June 2019). Exposures of junior creditors falling due before that date are deemed to be expired; claims falling due after that date remain unaffected.

  Such procedure, i.e. applying unequal treatment regimes within the group of junior creditors depending on the cut-off date, is unconstitutional. This constitutes a violation of the fundamental right to the protection of property.

o Moreover, the Hypo Reorganization Act provides for the guarantees, including the guarantee granted by the Province of Carinthia pursuant to the Holding Act of the Province of Carinthia, to expire. This provision, too, is unconstitutional:

  A provision resulting in the expiry of the guarantee, which exclusively applies to the group of junior creditors, while the guarantees for other creditors remain operational, is neither factually justified nor proportionate.

Regardless of the above, the following applies:

Legal guarantee statements issued by a federal province must not be rendered completely invalid retroactively through a single measure imposed by the law.

This also applies in a case in which a federal province wishes to finance the expansion of a credit institution under its control by granting guarantees, but is evidently incapable of bearing the risk.

As stated in the decision: “However, even then such misconduct must not be corrected solely and exclusively by retroactively declaring the legal guarantee statement issued by a federal province completely invalid.”

What does the Constitutional Court’s decision mean in concrete terms?

o The “haircut” to be taken by the creditors concerned (banks, insurance companies, etc.) can no longer be implemented on the basis of the Hypo Reorganization Act.

  However, pursuant to the new Bank Reorganization and Resolution Act, the Financial Markets Supervisory Authority (FMA) has issued an administrative decision (“moratorium decision”), which also applies to the aforementioned claims of the creditors.

  Whereas the Hypo Reorganization Act – now repealed – would have rendered the claims invalid, the FMA decision upholds the claims, but pronounces their deferral.

The FMA decision, as well as the Bank Reorganization and Resolution Act, were not subject to the Constitutional Court proceedings.

o On account of its decision, the Constitutional Court will have to bring the remaining proceedings based on petitions submitted by ordinary courts of law to a conclusion, unless such petitions are withdrawn. Moreover, the proceedings underlying these petitions, which were initiated by the creditors before the ordinary courts of law (in particular the Regional Court of Klagenfurt and the Commercial Court of Vienna), will be continued on the basis of the decision rendered by the Constitutional Court today.

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